In the High Court of Judicature at Madras

Dated: 05/11/2004

Coram

The Honourable Mr.Justice V.KANAGARAJ
and
The Honourable Mr.Justice M.THANIKACHALAM

Writ Appeal No.276 of 2002

Tmt. Grace Subanandam ... Appellant

-Vs-

1) The Revenue Divisional Officer
Usilampatti
Madurai District.

2) Thirumangalam Co-operative
Building Society Limited
A.1998 Thirumangalam Taluk
Madurai District.

3) The State of Tamil Nadu
rep. by the Secretary
for Co-operative Housing Department
Fort St.George
Madras.9. ... Respondents

Appeal under Clause 15 of the Letters Patent against the order
dated 23.10.2000 made in W.P.No.85 of 1995.

!For petitioner : Ms. K.Suguna

^For respondents : Mr. V.Subbarayan Spl.GP for R1
No appearance for R2

:J U D G M E N T

(The Order of this Court was made by V.KANAGARAJ.,J.)

The above writ appeal is directed against the order made by
the learned Single Judge of this Court dated 23.10.2000 in W.P.No.85 of 1995

praying to set aside the said order on grounds such as, that the learned Judge erred in not considering that the land of six cents acquired is kept vacant through which alone the appellant should gain access into the back portion of the acquired property wherein her residential house is in existence; that the possession of the house by the appellant's husband would not in any manner justify the acquisition of six cents of the appellant's land; that the 23 feet width eastwest road lies north of the acquired property and no road is either formed or in existence in the acquired property; that the

learned Judge failed to consider that the land has been acquired for a meager amount in order to sell for higher price which is highly objectionable which would only reflect the profit making mentality of the second respondent; on such grounds the learned counsel appearing on behalf of the appellant has come forward to prefer the above writ appeal seeking the relief extracted supra.

2. During arguments, the learned counsel appearing on behalf of the appellant causing production of a rough sketch and even showing the sketch prepared by the Thirumangalam Co-operative Building Society approved in D.T.P.No.1164 of 1990 wherein this Court is able to see that the plots have been put up in such a way, that on the immediate north of the acquired property a 23 feet road is formed, on the rear side of the acquired property is the 4 cents of land comprised with residential building of the petitioner lying, on the south there is a canal and on the east and west also, plots have been formed, needless to mention that the petitioner's residential building comprised in 4 cents of land left out at the time of acquiring the front portion extending to six cents is completely blocked on all four sides and if any building or structure is put up in the acquired property which is lying on the north of the building is in occupation by the petitioner will cent percent block the access of the petitioner to the main road and since on all three sides also there are going to be buildings, or structures as per the scheme of allocation of those lands by the society, the appellant would be completely bereft of any means of access to have ingress, egress or regress and therefore, justice warrants this Court to interfere with the order passed by the learned Single Judge without considering the situation that is prevalent on the grounds.

3. It is relevant to note that the appellant is the awardy of the six cents of land forming the north side of her property and only in the remaining 4 cents left out her residential house is in existence. After all the appellants cannot under any circumstances, be asked to get away from the remaining portion of 4 cents of land wherein her dwelling house is also in existence nor is it desirable in the circumstances of the case for such an order to be passed and therefore, particularly in view of the fact that these lands including that of the 6 cents of land, have been acquired by the Government for the beneficial use of the society mentioned supra, and the society in turn is also only selling the properties plotting out the same in favour of its members and therefore, no damage is going to be caused to the scheme of things as planned by the society in the event that the acquired property of the land is ordered to be re-entrusted with the appellant herself on such compensations fixed and the petitioner herself also being a member of

the co-operative society, who seems to have made representation to the effect of allotting the acquired property to herself, in such event there is absolutely no impediment on the part of this Court to pass order to the effect requiring the respondents to allot the six cents of land abutting the lands of the petitioner which has been acquired from herself and in such event the question that remains to be decided is only the cost of the land that the appellant has to part with for the six cents of land to be allotted in her favour.

4. The learned Special Government Pleader would suggest that the price shall be the same on par with the market value but even the fixed market value as on date to the known source of law and to the procedures followed so far particularly, in matters of land acquisition for the purpose of fixation of the price of the land, only the latest price for which the adjacent properties have been sold which would serve as the guideline and in such event, learned counsel for the appellant would come forward to cause production of the attested copy of the document under which the very society Thirumangalam House Building Co-operative Society Limited, the beneficiary in the acquisition proceedings has registered the adjacent property to that of the land in question in favour of a third party in the year 2002 for a sale price of Rs.8000/- per cent inclusive of all amenities on the whole and therefore since this document registered in Document No.3164 of 2002 at page 1 onwards to 15 pages on the file of the Sub Registrar Thirumangalam would serve as the best evidence for the fixation of the value of the plot and calculating the same, the six cents which is to be sold in favour of the petitioner/appellant making payment to that extent, the appellant shall purchase the said property which the respondent shall register in her name within 60 days from the date on which the copy of this order is made ready which alone will serve the ends of justice and hence the following Judgment:-

In result,

(i) Subject to the terms and conditions of the sale as discussed in the preceding paragraph, the writ appeal stans allowed
(ii) that the order of the learned Single Judge of this Court dated 23.10.2000 in W.P.No.85 of 1995 is hereby set aside;

No costs.

Index : Yes
Internet : Yes

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To
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